U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted] Public Copy

File: EAC-98-037-50414 Office: Vermont Service Center Date: JAN 10 2000

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), in order to employ him as a "Bible instructor for youth." The director denied the petition finding that the duties of the proposed position required no specific religious training and that the evidence furnished was inadequate to establish that the proposed position constituted a religious occupation for the purpose of special immigrant classification.

On appeal, counsel for the petitioner submitted a written brief arguing that an official of the petitioner has stated that the church has had a practice of employing religion teachers, that the beneficiary is qualified for the position, and that the beneficiary has experience as a religion teacher.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> (III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional

> work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner is a church claiming, in various written statements, a congregation of between 350 and 450 members. It claims tax exempt recognition through its affiliation with the General Synod of the Reformed Church in America. It submitted a 1997 federal tax return form reflecting $726,509 in gross revenues. The beneficiary is described as a thirty-eight-year-old male native and citizen of Korea. The petitioner did not respond to the question on the petition form requiring the disclosure of the date and manner of his entry into the United States and did not furnish copies of his travel documents. Documentation was submitted that the beneficiary has been a full-time student at the New York Theological Seminary for an unspecified period of time. The petitioner declared on the petition form that the beneficiary has never been employed in the United States without authorization, however, this statement is contradicted by other claims that the church has employed the beneficiary as a Bible instructor. The petitioner seeks classification of the beneficiary in order to employ him as a full-time Bible instructor for youth at a salary of $200 per week, or $10,400 per year.

It must first be noted that the petitioner did not provide all required information on the petition form. Absent all required information, the petition cannot be properly adjudicated. The petition may be denied as incomplete solely on this basis. See 8 C.F.R. 103.2(a)(1). Nevertheless, the appeal will be reviewed on its merits.

At issue in the director's decision is whether the position of "Bible instructor for youth" has been shown to constitute a qualifying religious occupation.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

> *Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

In order to establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute does not define the term

religious occupation and the regulatory definition is framed in the broadest terms. It states only that the position must be related to a traditional religious function and provides a brief list of examples. The term "traditional religious function" is not defined. This serves to accommodate all religious organizations and their respective traditions of various vocations and occupations.

The list of examples reflects that not all employees of a religious organization are considered to be engaged in a religious occupation. The regulation states that positions such as cantor, missionary, and religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed of the denomination. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The position of "religious instructor" is listed in the regulation as an example of a qualifying religious occupation. The regulation, however, is silent on the definition of the job titles listed as examples. Merely stating that a person will be employed under a given job title is not sufficient to meet the burden of proof. In this case, the petitioner submitted documentation reflecting a claim that it employs in excess of 30 lay persons as religious instructors for programs serving its congregation in age groups from "nursery" to "adult." The petitioner indicated that its religious instructors are salaried, but did not specify the percentage of its employees who are full-time and permanent. The claim that an individual congregation the size of the petitioner employs in excess of thirty lay persons in a permanent full-time salaried capacity, in addition to its ministerial and secular staff, is highly unusual. The petitioner did not furnish a detailed description of its educational programs in which the beneficiary would be employed or a comprehensive description of its staffing. Absent such documentation, the Service is unable to determine that the proposed position is traditionally a permanent full-time salaried occupation within the denomination. A part-time "Sunday-school teacher," for example, working a few hours per week,

even if salaried, is not qualifying as a religious occupation as contemplated under the special immigrant provisions. The petitioner also did not state the hours of operation of its educational programs, the location of the classes, or make clear whether the beneficiary would be employed to work for the church or for an affiliated parochial school. A parochial school is not normally recognized as a tax exempt religious organization and therefore proposed employment at a school is not qualifying. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Absent a comprehensive description of the proposed position, supported by corroborative documentation, the Service cannot determine that the proffered position of religion instructor for youth is qualifying. Therefore, it must be concluded that the petitioner has failed to establish that the proposed position is qualifying as a religious occupation within the meaning of section 101(a)(27)(C) of the Act.

Administrative notice is made of a letter dated April 17, 1998, submitted by the pastor of the church in a related proceeding. In the letter, Rev. [redacted] stated that in the past special immigrant religious workers sponsored by the church breached their contract upon approval of permanent resident status and that the church now requires a "firm two-year employment contract" with its alien workers. The special immigrant classifications are exempt the strict labor certification requirements imposed on other employment-based immigrant classifications in section 203(b)(3) of the Act. The Service interprets this exemption to mean that aliens granted special immigrant classification will not compete with U.S. workers in the secular labor market. Therefore, the job offer on which a special immigrant petition is based must be intended for permanent employment with a religious organization. There are separate provisions of the Act for religious organizations seeking to temporarily employ alien workers. See Section 101(a)(15)(R) of the Act. A petitioner must credibly establish its intent to employ the alien beneficiary in the capacity specified in the petition. Matter of Izdebska, 12 I&N Dec. 54 (Reg. Comm. 1966). The petitioner has not established that it has the intent to employ the beneficiary in a permanent position. The petitioner must establish that the beneficiary has the intent to work in the United States in the position specified in the petition. Matter of Semerjian, 11 I&N Dec. 751 (Reg. Comm. 1966). The petitioner has not established that the beneficiary has the intent to work in the proffered position. Therefore, the job offer is not qualifying and the petition may not be approved on this basis as well.

In addition, Service records reflect that the petitioner has filed in excess of 50 petitions for special immigrant classification of aliens as religious workers, although it denied this fact on the petition form at the space requiring the declaration of the number

of any additional filings. This constitutes a misrepresentation of a material fact. A visa petition may not be approved where all the facts stated therein are not found to be true. See Matter of Great Wall, 16 I&N Dec. 142 (Reg. Comm. 1977). As the appeal will be dismissed on the merits discussed above, this issue will not be examined further.

The record reflects that the petition is deficient on grounds beyond the discussion in the director's decision. The statute requires that the beneficiary have been a member of the petitioner's denomination and have been continuously carrying on the occupation specified in the petition for the two years immediately preceding filing.

8 C.F.R. 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on November 14, 1997. Therefore, the petitioner must establish that the beneficiary had been a member of the denomination and had been carrying on the occupation for at least the two years from November 14, 1995 to November 14, 1997.

In a letter dated April 27, 1998, the pastor of the petitioning church stated that the beneficiary served the [redacted] from September 1993 to December 1995 and that he joined the petitioning church at an unspecified date in December 1995. [redacted] is a separate denomination from the Reformed Church in America. Therefore, the beneficiary had not been a member of the petitioner's denomination from November 14, 1995. For this reason, the beneficiary is statutorily ineligible for the classification sought.

The petitioner also asserted that the beneficiary's alleged employment by the two churches satisfied the continuous experience requirement. The petitioner furnished no conclusive proof, such as certified tax records, that the beneficiary was continuously employed by the churches in a full-time capacity for the requisite period. The petitioner also submitted documentation that the beneficiary was a full-time student throughout this time. The alleged employment by the two churches is considered incidental to the beneficiary's primary endeavor or occupation as a full-time

student. Therefore, it has not been adequately demonstrated that the beneficiary was continuously carrying on a religious occupation throughout the two-year period.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.